

Court Practices for Oversight of Conservatorship Cases

During the course of a statewide review of conservatorship files, many courts reported that they had developed a particular method or practice to strengthen their management of conservatorship cases. The judges and probate registers believe these practices result in an improved process that saves time and resources, while enhancing the integrity of the court in the communities they serve.

The practices outlined are reported and observed "best practices." Not all of these practices are required by statute or court rule. This list has been compiled to be used as a guide for those courts that are able and would like to improve oversight of conservatorship cases. Practices are listed by general topic area.

Training

- Conduct periodic training programs for conservators.
- Provide written training materials to conservators at appointment that clearly explain their duties and responsibilities.
- Meet with newly appointed conservators and assist them in completing the initial inventory and the first annual account.
- Provide newly appointed conservators with samples of all documents which include examples of how each document should be completed.
- Provide mandatory training for attorneys seeking appointment as guardians ad litem and/or assigned counsel for the protected individual.

General

- Require that all conservators be bonded to cover all assets that are not restricted.
- Require that professional fiduciaries maintain and submit proof of malpractice or corporate liability insurance.
- Develop and provide a written policy regarding how conservators are paid.
- Provide conservators with written guidelines for record keeping at time of appointment.
- Provide notice to all interested persons in an appointment proceeding, and appoint a guardian ad litem to represent the protected individual in the interview process.

Inventory

- Require that the most current assessor's record showing the State Equalized Value (SEV) be attached to the inventory so that court staff can verify that the property listed on the inventory matches the property listed on the SEV statement.
- Require that a copy of a corresponding financial institution statement be attached to the inventory for each account listed on the inventory so that court staff can verify the reported balance.

Annual Accounts

- Require annual accounts for all adult cases. [MCR 5.409(C)(1)]
- Require that minor conservatorship assets be deposited in a restricted bank or investment account when money is not needed to provide ongoing support for the minor.
- Require that a copy of a bank or investment account statement be attached to the annual account.
- Require that a verification of funds on deposit be attached for all restricted accounts.
- Provide the conservator with a copy of the "Account of Fiduciary" form, along with the pre-notice of account due, with the following items already completed: a) case name, b) case file number, c) accounting period dates, and d) balance on hand from previous account or from inventory if first account.

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Reviewing Accounts

Review accounts annually. At a minimum, a "review" consists of the following:

- Confirm that the accounting period is correct. If the conservator selects another accounting period, place a document in the file confirming the change. Accounts for a period exceeding 12 months are not accepted for filing. [MCR 5.409(C)(2)]
- Confirm that the beginning balance of the current account matches the ending balance of the last account or inventory filed.
- Confirm that the totals shown in all categories are correct by checking the addition.
- Confirm that the totals shown in Schedules A, B, C, and D match the totals shown in the "Summary" section (form PC 584).
- Ensure that fiduciary fees or attorney fees incurred during the reporting period are stated in items 7 and 8 respectively (forms PC 583 and 584). When fees are charged, they must be supported by a written description of the services performed to include: a) date of service, b) description of service, c) amount of time spent on that service, d) amount charged for that service, and e) total billed. [MCR 5.310(C)(2)(c)]
- Ensure that conservators complete all sections of the annual account form. Account forms submitted with incomplete or missing information are not accepted for filing.
- Verify that an account review has been completed by having the reviewer affix their signature or initials and the date completed on the account form.
- Conduct a random file check to ensure that fiduciaries are fulfilling their duties.

Interested Persons

- Maintain a list of all interested parties and place a copy of that list in or on the case file for ready reference. If the conservatorship is for a minor, note the minor's 14th birthday and add the minor to the list on his/her 14th birthday.
- Add additional information to this list to record and track that the conservator filed proofs of service or waiver and consent forms. In the event the court sends a notice for a hearing or other event, the proofs of service are noted on this form. (Note: MCR 5.104(A)(1) and MCR 5.409(D) require proof of service to be filed at the time the account is filed - within 56 days after the end of the accounting period - and the proof of service on the notice of hearing no later than the date of hearing to allow the account. MCR 5.409(B)(2) requires the proof of service for an inventory to be filed no later than 56 days after appointment of a conservator.)

Petition to Allow Accounts

- Examine the list of interested parties to confirm that the petitioner served each interested party with a copy of the accounting. [MCR 5.104(A)(1) and MCR 5.409(D)]
- Schedule a hearing to allow the account. [MCR 5.409(C)(3)]

Managing Deficiencies

- Send out timely notices of deficiency to reduce the overall occurrence of deficiencies.
- Use the tracking capabilities of the case management system to run weekly deficiency reports.
- Send out a pre-notice that the annual account is due in 30 days to have fewer delinquent filings.
- Include the case name, case number, accounting period, and beginning balance on the account form sent to the fiduciary, or include a copy of the previous inventory or annual account.
- Include a hearing date and time on the notice that the conservator must appear if the deficiency is not corrected within 28 days. The date and time is for a hearing with the judge or a conference with the probate register. If a conference is held, the court must prepare a written memorandum pursuant to MCR 5.203(B). [MCR 5.023(A)(B)] If the fiduciary corrects the deficiency within the

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time prescribed, the hearing or conference does not occur. An extension may be granted; however, the total extended period may not exceed 56 days. [MCR 5.203(C)]

Complaints

- Utilize an ombudsman to investigate complaints and make referrals to the appropriate entity.

Case File Maintenance

- Place documents in the case file in chronological order according to the filing date. This means the earliest documents are at the bottom of the pleadings and the most recent are on top. (See Component 7, Case File Management Standards)
- Organize the file so that all legal documents, including notices, pre-notices, and official correspondence, are on the same side of the file. (See Component 9, Case File Management Standards, for minimum file contents.)
- Organize the file so that notes regarding telephone contact the court may have had with parties, copies of court reporter/recorder logs, judge's notes, or register's memoranda are included for documentation.
- Flag or color code important documents such as orders, inventories, and accounts for easy reference.
- Maintain in the case file anything that may impact the timely and accurate tracking of the case, e.g. confirmation of changes in the accounting period, references to date and content of telephone conversations.

Letters of Authority

- Include language on the Letters of Authority regarding any restriction the court imposes. This includes language requiring restricted accounts for minors and that the funds are not to be withdrawn without court order. [MCR 5.202(B) and MCL 700.5427]
- Include language on the Letters of Authority that the restricted account agreement, signed by the bank or financial institution and the fiduciary, are to be filed within 14 days.

Restricted Accounts

- Indicate on the order allowing a withdrawal from a restricted account that it is the original. Include the following language in bold letters on the order: **Only accept an original of this order. Retain this order when releasing funds.**

Special Fiduciaries and Successor Conservators

- Ensure that when a successor conservator is appointed, the prior conservator files a final account with the court. [MCR 5.310(C)(2)(a)] Review the final account to confirm that the "Balance of Assets Remaining" as reported match the "Total Assets on Hand" reported in the successor conservator's inventory. [MCR 5.409(C)(6)]
- Maintain a list of attorneys and other persons available to accept appointments as conservator or special fiduciary. Make appointments on a rotating basis or other method to achieve an equal number of appointments for all persons on the list. Remove persons from the list when they are deficient in their performance.
- Require that attorneys acting as guardians ad litem or assigned counsel for the protected individual provide proof of malpractice insurance.